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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA INCORPORATED

Defendant.

NANA REGIONAL CORPORATION and
NORTHWEST ARCTIC BOROUGH,

Intervenors-Defendants.

Case No. A04-49 (JWS)

DECLARATION OF
DR. MICHAEL KAVANAUGH

1 I, Michael Kavanaugh, declare:

2 1. I am over 18 years of age and not a party to this action. I have been retained by the
3 plaintiffs' counsel to serve as an expert witness on the economic benefit Teck Cominco Alaska
4 Incorporated ("Teck Cominco") gained from non-compliance with its NPDES permits and its
5 ability to pay a penalty.

6 2. I submitted a list of my testimony since 1990 with my original expert report in 2004
7 and with my updated expert report in 2008. This identification of my prior testimony at both trial
8 and deposition is in my curriculum vitae, which was attached to, and a part of, each expert report.

9 3. In my original expert report, produced in December 2004, I estimated the benefit Teck
10 Cominco gained from alleged violations at its Red Dog Mine. I am informed and believe that
11 Teck Cominco is a wholly-owned subsidiary of Teck Cominco Limited. In the text of my report
12 I referred to the parent company, Teck Cominco Limited, as the recipient of the gain (or
13 economic benefit) much like someone would say a parent receives the gain given to a child. If
14 there was a data gap in the financial material available on Teck Cominco, in the 2004 report I
15 used information from Teck Cominco Limited to plug the gap.

16 4. The District Court determined that it was improper to refer to Teck Cominco's
17 economic benefit as received by Teck Cominco Limited, and in my updated expert report of 2008
18 I was careful not to use Teck Cominco Limited interchangeably with Teck Cominco, or to use
19 any data at all from Teck Cominco Limited.

20 5. In updating my report, I read the Court's summary judgment decision (on TDS) and
21 took into account the findings that it made as to liability. I extended my economic benefit
22 estimate from August 2003 to June 2004, and included violations during the Arctic Grayling
23 spawning season in 2005, 2006 and 2007. I did so because I believe this is what an update is
24 supposed to do, that is, incorporate new information that is relevant to the decisions the Court
25 must make.

26 6. In constructing an economic benefit analysis, most of the inputs are independent of the
27 ownership structure of the company involved. The cost data has nothing to do with the parent or
28 child company. The dates of violation used for calculating benefit have nothing to do with the

1 parent or child company. The measures of price change (inflation) have nothing to do with the
2 parent or child. The taxes used have nothing to do with the parent or child because I used the
3 statutory limits of U.S. and Alaska taxes in both analyses. In my examination of economic
4 benefit I looked at the opportunity costs in two ways, the equity rate and the weighted average
5 cost of capital (WACC). For the first of these, the equity rate, which I explicitly favored in my
6 2004 report, has nothing to do with the parent or the child company. The second, WACC, is the
7 one place in my 2004 report where I used Teck Cominco Limited data for the economic benefit
8 analysis. All of the other parts of the economic benefit analysis, and its conclusions, are
9 independent of the identity of the company and applied in my 2004 and 2008 reports to Teck
10 Cominco Alaska Incorporated. My opinions in my 2004 expert report that refer to the equity cost
11 of capital were not based on Teck Cominco Limited data, and pertained to Teck Cominco Alaska
12 Incorporated in the 2004 report; my 2008 report simply updates that equity cost number, which
13 still applies only to Teck Cominco Alaska Incorporated.

14 8. In my original 2004 report and my 2008 updated report I used the date of June 1, 1999
15 to begin my *economic benefit* analysis.

16 9. In my 2004 report, I used 1999 as the beginning year for the *ability to pay* analysis. In
17 my 2008 report, I used 1998 as the beginning date for the ability to pay analysis. This has the
18 effect of making that analysis more conservative, as 1998 was a less than average year of
19 performance for Teck Cominco. Using the same starting year of 1999 as in my 2004 report, and
20 updating it to the present with 2004, 2005 and 2006 data, Teck Cominco Alaska has a 71%
21 chance of being able to afford a fine of \$27 million. That is slightly higher than the 70% chance
22 of paying a \$27 million fine that I found in my 2008 update, which used the 1998 data as well,
23 demonstrating the conservatism of my approach.

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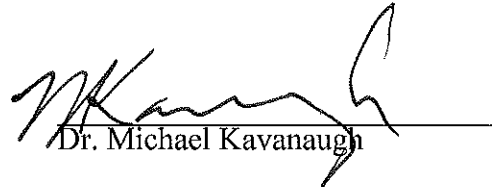
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1 10. My actual data for the 2008 update, without the 1998 data, is below. This table is
2 based solely on Teck Cominco Alaska Incorporated data.

3 Year	Reported (\$,000s)	Constant 2008 \$ (\$,000s)
4 1999	69,402	82,942
5 2000	71,917	84,262
6 2001	1,555	1,786
7 2002	77	87
8 2003	36,078	39,833
9 2004	167,411	181,211
10 2005	246,564	261,656
11 2006	751,561	781,924
12 Mean		179,213
Standard Deviation		259,488

13 I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th
14 day of February at San Francisco, California.

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17 Dr. Michael Kavanaugh
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